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Committee

Larry E. Craig, Chairman
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No. 3

Legislative Notice

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S. 257 — National Missile Defense Act of 1999

Calendar No. 16

Reported without amendment from the Senate Armed Services Committee on February 12, 1999, by a vote of 12-7 (Senator Lieberman joined all Committee Republicans in voting aye, making this the first ever bipartisan Committee vote on a national missile defense bill); Senator Landrieu voted "present." S. Rept. 106-4. Minority views filed.

NOTEWORTHY

- Senator Lott is expected this week to move to proceed to S. 257.
- S. 257, the National Missile Defense Act of 1999, is a bipartisan bill sponsored by Senators Thad Cochran (R-MS) and Daniel Inouye (D-HI) with 51 additional cosponsors. It establishes that it is the policy of the U.S. to deploy as soon as technologically possible, an effective National Missile Defense (NMD) system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate).
- The United States has no defense against ballistic missile attacks. Yet a threat of such attack already exists. Proliferation of missile technology led a bipartisan commission to conclude unanimously in July 1998 that a missile threat to the United States from rogue states could appear with "little or no warning." Shortly thereafter, North Korea tested a missile capable of reaching U.S. territory. And although unlikely, the threat of unauthorized or accidental launches from Russia or China is real, and may be heightened as the armed forces of the former Soviet Union undergo transition to a post Cold-War posture. S. 257 addresses these concerns.
- S. 257 allows the Defense Department complete flexibility in designing the NMD system: the bill does not mandate specific architectural elements, specific deployment dates, or changes to any arms control agreements.
- The Congressional Budget Office states, "the bill, by itself, would have no budgetary impact."
- A similar bill, S. 1873, the American Missile Protection Act, was filibustered by Democrats in 1998. Two attempts to close debate on a motion to proceed (in May and September, see RVAs 131 and 162) both failed by a vote of 59-41 (60 votes are required to invoke cloture).
- It is likely Senator Levin (D-MI) will offer a substitute amendment that U.S. policy should be to work to *develop* a national missile defense program, with deployment subject to a host of conditions, including the outcome of arms control negotiations.

BACKGROUND

The Senate in recent years has considered several different bills on the issue of national missile defense.

In 1996, S. 1635, the Defend America Act, was sponsored by then Majority Leader Bob Dole (R-KS) and would have established a U.S. policy for the deployment of a national missile defense system by the end of 2003 that:

- was to provide a highly effective defense of the territory of the United States against limited, unauthorized, or accidental ballistic missile attacks; and,
- was to be augmented over time to provide a layered defense against larger and more sophisticated ballistic missile threats as they emerge.

There was virtually no floor debate on this bill due to a Democrat filibuster. A motion to close debate on the motion to proceed failed by a vote of 53-46.

In 1998, Senators Cochran and Inouye introduced S. 1873, whose policy statement was identical to that in the current bill, S. 257: "to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate)." Two attempts to end the Democrat filibuster of S. 1873 failed by 59 to 41 — each time one vote shy of the necessary 60-vote margin.

Opponents of S. 1873 questioned whether a threat existed justifying deployment of national missile defenses, but that question was largely settled by two events in 1998. In July, the bipartisan Commission to Assess the Ballistic Missile Threat to the United States reported its unanimous findings that a missile threat to the United States could appear with "little or no warning" and that any policy which depended on such advance warning, as the Administration's National Missile Defense program does, should be reassessed. In August, North Korea tested its Taepo Dong-1 missile, shocking the U.S. Intelligence Community. What had been expected to be a 2-stage medium-range missile was in fact a 3-stage missile capable of reaching the United States. The threat previously not expected until 2010 had arrived.

On January 20, 1999, Senators Cochran and Inouye introduced S. 257, the National Missile Defense Act of 1999, a one-sentence bill with 51 additional cosponsors. On February 9, the Senate Armed Services Committee reported out S. 257, the first NMD bill to be reported out of the Armed Services Committee with bipartisan support.

HIGHLIGHTS

The Committee reported S. 257 to the Senate for the following reasons:

1. Value of National Missile Defense (NMD)

The Committee believes a commitment to deploying NMD will have two crucial impacts on U.S. security: First, it will deter proliferation. Nations seeking to possess ballistic missiles to coerce or attack the United States will realize that such pursuit is a waste of time and resources. Second, if some aspiring states are not deterred, a commitment to deploy an NMD system will ensure America is protected from limited ballistic missile attack.

2. Need for a National Missile Defense

The Clinton Administration's policy on NMD, as embodied in the "3+3 Deployment Readiness" program was originally based on the premise that the United States did not face a sufficient ballistic missile threat to justify a commitment to deploy an NMD system. In addition, there was the assumption that the United States would be able to clearly discern the emergence of such a threat in sufficient time to deploy a defense. The Committee has repeatedly expressed concerns about the Administration's policy, and has acted to support deployment of an NMD system within the limits of technology and affordability, as evidenced by the unanimous vote among Committee Republicans in 1998 on S. 1873.

The Committee's concern about the Administration's "3+3" program is based in part on the fact that a threat of ballistic missile attack on the United States already exists — the threat of unauthorized or accidental launches from Russia or China is real. But there is also the imminent threat from the growing, widely acknowledged proliferation problem that President Clinton himself declared to be a "national emergency."

Examples of this growing threat abound. Rogue countries have been steadily increasing the range of their ballistic missiles, sometimes in sudden leaps:

- North Korea first purchased a 300 km Scud-B missile in the 1980's; North Korea then developed the 500 km Scud-C; it is now deploying the 1,000 km No Dong.
- North Korea is also developing a new class of ballistic missiles, the Taepo Dong-1 and 2. The Taepo Dong-2 missile clearly will be an intercontinental ballistic missile capable of attacking much of the United States and which could be operational in a few short years.
- On August 31, 1998, North Korea tested the Taepo Dong-1 missile over Japan, demonstrating the capability to deliver a small payload over an intercontinental range.

- Of particular note is that while the Intelligence Community had observed and reported on preparations for this test, it was completely surprised by the sophistication of the Taepo Dong-1 missile, especially its use of a solid-fuel motor as a third stage.
- Iran has made dramatic and sudden progress in its Shahab-3 and Shahab-4 medium-range missiles, successfully testing the Shahab-3 in 1998.
- Pakistan last year tested a missile with a range of 1,500 km.

The proliferation of technology, expertise and hardware to build a long-range ballistic missile is accelerating rapidly, spurred by advances in information technology and growing demand for space launch vehicles. As reported by the independent Commission to Assess the Ballistic Missile Threat to the United States, chaired by former Secretary of Defense Donald Rumsfeld (The Rumsfeld Commission): "The threat to the U.S. posed by these emerging capabilities is broader, more mature and evolving more rapidly than has been reported in estimates and reports by the Intelligence Community" [See Executive Summary of the Report of the Commission to Assess the Ballistic Missile Threat to the United States, 7/15/98].

3. Continuing Technological Surprise

The Rumsfeld Report also highlighted that: "The warning times the U.S. can expect of new, threatening ballistic missile deployments are being reduced. Under some plausible scenarios the U.S. might well have little or no warning before operational deployment."

The Intelligence Community has been repeatedly surprised by advances in ballistic missile technology achieved by less developed countries, calling into question its ability to anticipate precisely when the United States will be threatened by long-range ballistic missiles.

- In 1997, the Director of Central Intelligence (DCI) testified that Iran could have a medium-range missile by 2007. One year later, he told the Senate Iran could have such a missile much sooner than his previous assessment. The missile was successfully tested in 1998.

Experience has shown that variables, such as the amount of outside assistance to rogue nations cannot be predicted reliably. A number of these factors can significantly speed the acquisition of ballistic missiles by third countries. For instance:

- On April 6, 1998, Pakistan launched a ballistic missile capable of reaching 1,500 km. Yet, a November 1997 Defense Department report on proliferation contained no mention of any effort by Pakistan to develop such a capability, crediting Pakistan only with a 300-km short-range ballistic missile.

Such surprises underscore how evidence of technological developments is often difficult to obtain and that even when such evidence is available, it is oftentimes difficult to discern just what it means until after the fact. A 1997 quote by the DCI is instructive: "gaps and uncertainties preclude a good projection of exactly when 'rest of the world' countries will deploy ICBMs."

4. Recent Developments Reinforce the Need to Move Beyond "3+3"

The Administration itself has acknowledged the existence of the threat and has taken significant steps to address it. In fact, Defense Secretary Cohen has increased funding for NMD by \$6.6 billion over five years, which the Committee commends.

The recent international developments, however, fundamentally change the rationale for supporting the "3+3" policy. The Administration has admitted that its only remaining decision criterion for NMD concerns technology development. But since S. 257 makes clear that a deployment would only proceed once the technology is ready, the Committee sees no reason to further delay a deployment decision.

The Administration has further acknowledged that it must amend or withdraw from the Anti-Ballistic Missile (ABM) Treaty of 1972 prior to deployment of an NMD system. The Committee believes that once a firm commitment to NMD deployment has been announced, only then will Russia seriously engage in negotiations to modify the ABM Treaty.

COST

According to a February 2, 1999, Congressional Budget Office estimate, "the bill, by itself, would have no budgetary impact. Because it would not affect direct spending or receipts, pay-as-you-go procedures would not apply. Any budgetary impact would stem from separate implementing legislation or from annual authorization and appropriation bills."

ADMINISTRATION POSITION

A March 4, 1999, Statement of Administration Policy states the following:

"The Administration strongly opposes S. 257 because it suggests that our decision on deploying an NMD system should be based solely on a determination that the system is 'technologically possible.' This unacceptably narrow definition would ignore other critical factors that the Administration believes must be addressed when it considers the deployment question in 2000.... If S. 257 were presented to the President in its current form, the President's senior national security advisors would recommend that the bill be vetoed.

"The Administration intends to base the deployment decision on an assessment of the technology (based on an initial series of rigorous flight-tests) and the proposed system's operational effectiveness. In addition, the President and his senior advisors will need both to confirm whether the rogue state ballistic missile threat to the United States has developed as quickly as is currently expected and to re-evaluate the cost of deploying an NMD system.

"A decision regarding NMD deployment must also be addressed within the context of the ABM Treaty and our objectives for achieving future reductions in strategic offensive arms through START II and START III.

"The Administration urges the Senate to modify S. 257 to allow a deployment decision to be based on criteria other than just technical feasibility and to reflect the priority that must be attached to the ABM and START objectives."

OTHER VIEWS

Minority Views filed by Senators Levin, Kennedy, Bingaman, Byrd, Robb, Cleland, and Reed

"We cannot support S. 257, the National Missile Defense Act of 1999 as it has been reported to the Senate by the Armed Services Committee. We agree with the President's senior national security advisors that this legislation would needlessly make a National Missile Defense (NMD) deployment decision now, before the Defense Department wants to, needs to or is prepared to make such a decision. This legislation would not advance by one day the development of an NMD system suitable for deployment, but could result in an increased threat to the United States from the proliferation of nuclear weapons." [p.7]

The Senators also highlighted their opposition to S. 257 for the following reasons:

"Enactment of S. 257 would undermine the current effort of the Administration to reach a negotiated agreement on any changes to the Anti-Ballistic Missile (ABM) Treaty that may be necessary to accommodate deployment of a limited NMD system." [p. 7]

"It is important to understand that S. 257 will not accelerate the development of a limited NMD system suitable for deployment by one day." [p. 8]

"Even with Secretary Cohen's announcement that the earliest anticipated deployment date is now 2005, the NMD program remains high risk...." "By committing to deploy now, before the system has been fully tested and before its operational capability has been demonstrated, S. 257 would run the risk of committing to a system that is either inadequate or, worse yet, ineffective." [pp. 9-10]

"By making the deployment decision now, S. 257 would preclude the Administration from negotiating possible changes to the ABM Treaty before making an NMD deployment decision in June of 2000. This is one of the key reasons that the President's senior national security advisors are strongly opposed to S. 257 and would recommend a veto of it." [pp. 11-12]

POSSIBLE AMENDMENTS

During markup, Senator Carl Levin (D-MI) offered an amendment in the nature of a substitute which stated that it should be U.S. policy to work to develop a national missile defense program. There is no mention of committing the United States to a national missile defense system, nor to the need to deploy such a system. The substitute was not brought to a vote in Committee. However, this amendment offers nothing to current Administration plans on NMD, and would in fact erect in law numerous obstacles to actual deployment, including successful resolution of arms control negotiations.

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